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Attorneys for Plaintiff,
ALFRED LARRAGA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

ALFRED LARRAGA,

Plaintiff,

v.

ZWICKER & ASSOCIATES, P.C.,

Defendant.

Case No.:

09 CV 2791 MMA RBB

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

ALFRED LARRAGA (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against ZWICKER & ASSOCIATES, P.C., (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

CR

1 without regard to the amount in controversy,” and 28 U.S.C. 1367 grants this court
2 supplemental jurisdiction over the state claims contained therein.

- 3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.
- 5 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(1).
- 6 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

7 **PARTIES**

- 8 7. Plaintiff is a natural person residing in Chula Vista, San Diego County, California.
- 9 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
11 and Cal. Civ. Code § 1788.2(h).
- 12 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ.
13 Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.
- 14 10. Defendant is a national company with its headquarters in Andover, Massachusetts.
- 15 11. Defendant acted through its agents, employees, officers, members, directors, heirs,
16 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
17 insurers.

18 **FACTUAL ALLEGATIONS**

- 19 12. Defendant constantly and continuously placed collection calls to Plaintiff seeking and
20 demanding payment for an alleged debt owed by Plaintiff's son.
- 21 13. Defendant constantly and continuously places collection calls to the number (619) 420-
22 7993 seeking and demanding payment for the alleged consumer debt.
- 23 14. Defendant constantly and continuously places collection calls from the number (978)
24 686-2255 with the return number (800) 370-2251 ext. 5630 seeking and demanding
25 payment for the alleged consumer debt.

1 15. Defendant failed to properly identify itself as a debt collector when contacting Plaintiff
2 by not leaving a message.

3 16. Plaintiff has requested that Defendant cease placing collection calls, however the call
4 from Defendant continue.

5 **COUNT I**
6 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

7 17. Defendant violated the FDCPA based on the following:

- 8 a. Defendant violated §1692c(a)(1) of the FDCPA by contacting Plaintiff at a time
9 and place known to be inconvenient.
- 10 b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural
11 consequence of which is to harass, oppress, and abuse Plaintiff.
- 12 c. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring
13 repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- 14 d. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without
15 disclosing his/her identity.

16 WHEREFORE, Plaintiff, ALFRED LARRAGA, respectfully requests judgment be
17 entered against Defendant, ZWICKER & ASSOCIATES, P.C., for the following:

18 18. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
19 Practices Act,

20 19. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15
21 U.S.C. 1692k,

22 20. Actual damages,

23 21. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
24 15 U.S.C. 1692k

25 22. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT

23. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

24. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
- b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.
- c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

WHEREFORE, Plaintiff, ALFRED LARRAGA, respectfully requests judgment be entered against Defendant, ZWICKER & ASSOCIATES, P.C., for the following:

- 25. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act,
- 26. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*,
- 27. Actual damages,
- 28. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and
- 29. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, ALFRED LARRAGA, demands a jury trial in
this case.

DATED: November 23, 2009

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: _____

Ryan Lee
Attorney for Plaintiff

Zwickler

VERIFICATION OF COMPLAINT AND CERTIFICATION

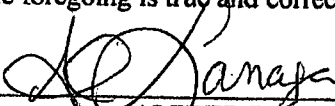
STATE OF CALIFORNIA

Plaintiff, ALFRED LARRAGA, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, ALFRED LARRAGA, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 11-19-2009


ALFRED LARRAGA

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ALFRED LARRAGA

DEFENDANTS

ZWICKER & ASSOCIATES, P.C.

(b) County of Residence of First Listed Plaintiff San Diego (CA)

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Ryan Lee (323) 988-2400
10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692 et seq.
 Brief description of cause:
 Unlawful and abusive debt collection practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/23/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

8307

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE

CR

MS

12/15/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS008307
Cashier ID: msweeney
Transaction Date: 12/15/2009
Payer Name: KROHN AND MOSS LTD

CIVIL FILING FEE

For: LARRAGA V ZWICKER AND ASSOC
Case/Party: D-CAS-3-09-CV-002791-001
Amount: \$350.00

CHECK

Check/Money Order Num: 19752
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.